IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

C.W.P. No. 7949 of 2005

Date of Decision: September 21, 2006

Ashok Kumar Dhamija

…..Petitioner

Vs.

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. Jagbir Malik, Advocate
for the petitioner.

Mr. Bijender Dhankar, Advocate
for the respondents.

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M.M. KUMAR, J. (ORAL)

The instant petition is directed against order dated March 1, 2005 (P-14) passed by respondents with-holding a part of gratuity of the petitioner to the extent of Rs.2,41,690/-. The aforementioned amount has been with-held on the allegation that there were shortages pertaining to the period of 1994-96, 1997-2001 and 2003 which the petitioner ought to have applied for being written off during his tenure. It is claimed that after his

retirement the amount of recovery cannot be written off. It is admitted position that all other retrial benefits have been paid to the petitioner which include G.P.F., G.I.S., leave encashment, commutation of pension, arrears of pension and about 50% of the amount of gratuity. However, an amount of Rs.2,41,690/- in respect of gratuity has been with-held on the allegation of shortage of oil and missing parts of transformer. It is admitted position that no show cause notice or charge-sheet/ disciplinary proceedings have been initiated against the petitioner for making recovery of aforementioned amount before the date of his retirement on July 31,2003. Even in the impugned order dated March 1, 2005, no such details are available showing that any notice was given.

Having heard the learned counsel for the parties, we are of the considered view that the respondents could not have with-held any amount of gratuity payable to the petitioner on account of allegation which have emanated after the date of his retirement. Such a course is not available to the respondents. In some what similar circumstances, this Court has earlier also in the case of **Hans Raj Sharma v. Uttar Haryana Bijli Vitran Nigam Limited and others** (Civil Writ Petition No. 152 of 2004, decided on October 29, 2004) has allowed the writ petition by following the judgment of Hon'ble the Supreme Court in **P.R. Naik v. Union of India**, AIR 1972 SC 554. It has been laid down in the aforementioned judgment that issuance of charge-sheet for initiation of departmental enquiry is a sine qua non.

In view of the above, we allow the writ petition and quash the impugned order dated March 1, 2005 (P-14). We further direct the respondents to release the balance of gratuity amount to the petitioner within a period of one month from the date a certified copy of this order is presented to the respondents. In case, the needful is not within one month, then the petitioner shall be entitled to interest at the rate of 6% per annum from the date the amount is payable till its actual payment.

(M.M.KUMAR)
JUDGE

September 21, 2006
sanjay

(M.M.S.BEDI)
JUDGE